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09/124,043	07/29/1998	JOHN S. HENDRICKS	SEDN/5212	6239

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EXAMINER

LONSBERRY, HUNTER B.

ART UNIT

PAPER NUMBER

2611

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/124,043

Applicant(s)

HENDRICKS ET AL.

Examiner

Hunter B. Lonsberry

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 23, 24, 27 and 32-59 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23, 24, 27, 32-51 and 59 is/are rejected.
- 7) ☒ Claim(s) 52-58 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 10/28/05 have been fully considered but they are not persuasive.

Applicant argues that Durden merely discloses a set top interface for transacting with the context of an impulse pay per view TV system and fails to disclose a memory that stores program access information and that purchase information is not the same as program access information, and that the viewing statistics are stored in the system manager and not in the set-top terminal, and that purchase of an event does not mean the user watched the event (response pages 13-14).

Regarding Applicant's argument, Durden discloses at column 6, line 57-column 7, line 4 that memory 21 within the STB stores data regarding programs purchased by the user, IPPV activity is recorded in memory 21. Module 20 transfers IPPV data to system manager 8 via phone processor 18 when a "request IPPV data" command is received. Upon successful transmission, the IPPV module will clear the events watched table maintained in NVM 21. Further a copy of the viewing statistics is stored in a memory 6 after retrieval from a user terminal (column 5, lines 29-50). Thus Durden explicitly teaches that a table of events watched by the user (accessed by a user) and this information is stored within the set top terminal. Further the examiner notes that the claim requires that program access information is stored as programs watched data.

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This language suggests that the programs a user accesses is recorded as programs watched, irrespective of whether or not the user was physically present in front of the television or not. The claim is silent as to requiring the user to be physically present.

Applicant argues that Durden does not teach the use of a programs watched matrix and that no storage is taught. Applicant argues that a matrix comprises a plurality of data elements arranged in a logical manner in which like data elements are grouped together (Pages 14-15).

Regarding applicant's argument with respect to storage of a programs watched matrix, see the above discussion. Further support for a programs watched matrix can be found at column 9, lines 7-30 and column 5, lines 29-50. The user's STB transmits the event id and time of purchase or the data may be . The data consists of two data points, thus forming a matrix.

Applicant argues that the Hashimoto complaint coefficient  $pc(j)$  does not reflect how often a given user watches a certain type of programming at a specific terminal as suggestions made by the Hashimoto algorithm that are appropriate to the customer will not result in a complaint, in that some complaints may be discarded or sometimes stored (response page 15).

Regarding applicant's argument, claim 23 merely requires that the number of times a user watches a programming category is stored as counts and that this information is updated as additional program access information is provided by the

terminal.. Hashimoto shows in figure 9b, that the value  $P_c(j)$  is updated as new complaints are received, and stores the latest number of complaints. Thus the programs watched matrix is updated with the latest information from the user's terminals. Further Durden teaches that the programming choices watched by a user are stored in a matrix. Hashimoto is relied upon to teach (the number of times, see column 3-4, how often to does watch a given program category, with responses "always, usually, often, sometimes and never") a given user watches a certain type of programming at specific terminal, this number is then aggregated for a number of terminals, thus aiding a program provider in determining how popular a type of programming is, and aiding in determining when to air programming.

### ***Allowable Subject Matter***

2. Claims 52-58 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 23, 24, 27, 32-51, and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,003,384 to Durden in view of U.S. Patent 4,745,549 to Hashimoto.

Regarding claim 23, Durden discloses an apparatus that gathers programs watched data comprising:

a plurality of terminals (15) connected to televisions and a program delivery system (5,6,8,10), each terminal including a memory (21) that stores program access information (pay-per-view event information, col. 6, lines 48-65); and

a receiver (18) coupled to the plurality of terminals, the receiver receiving the program access information, wherein the program access information is stored as program watched data (col. 9, lines 7-54)

wherein the programs watched data is stored in a program watched matrix (column 9, lines 7-30, the data consist of two data points, thus forming a matrix), each terminal has its own matrix stored in volatile memory.

Durden fails to disclose if the programs watched data is recorded of counts, the counts corresponding to the number of times a program category is watched at the associated terminal.

Hashimoto discloses a coefficient  $P_c(j)$  which corresponds to the number of complaints regarding a program which is reflected by how often (the number of times) a

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given user watches a certain type of programming at specific terminal, this number is then aggregated for a number of terminals (column 6, lines 44-60, column 7, lines 10-25), thus aiding a program provider in determining how popular a type of programming is, and aiding in determining when to air programming.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Durden to utilized the counts of Hashimoto, thus aiding a program provider in determining how popular a type of programming is, and aiding in determining when to air programming.

Regarding claim 24, Durden discloses an apparatus that gathers programs watched data comprising:

a plurality of terminals (15) connected to televisions and a program delivery system (5,6,8,10), each terminal including a memory (21) that stores program access information (pay-per-view event information, col. 6, lines 48-65); and

a receiver (18) coupled to the plurality of terminals, the receiver receiving the program access information, wherein the program access information is stored as program watched data (col. 9, lines 7-54)

wherein the programs watched data is stored in a program watched matrix (column 9, lines 7-30, the data consist of two data points, thus forming a matrix), each terminal has its own matrix stored in volatile memory.

Durden fails to disclose a plurality of databases which include information from programs watched matrices, the information including terminal address group identifier and program counts, and viewer profile information.

Hashimoto discloses a coefficient  $P_c(j)$  which corresponds to the number of complaints regarding a program which is reflected by how often (the number of times) a given user watches a certain type of programming at specific terminal, this number is then aggregated for a number of terminals (column 6, lines 44-60, column 7, lines 10-25), the databases include profile information (column 8, line 57, individual questionnaire result, a plurality of databases include a subscriber ID which corresponds to a terminal address, a group identifier which corresponds to a age group, column 3, lines 1-8), thus aiding a program provider in determining how popular a type of programming is amongst a given audience, and aiding in determining when to air programming.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Durden to utilized the counts of Hashimoto, thus aiding a program provider in determining how popular a type of programming is, and aiding in determining when to air programming.

Regarding claim 27, Durden discloses an apparatus that gathers programs watched data comprising:



a plurality of terminals (15) connected to televisions and a program delivery system (5,6,8,10), each terminal including a memory (21) that stores program access information (pay-per-view event information, col. 6, lines 48-65); and

a receiver (18) coupled to the plurality of terminals, the receiver receiving the program access information, wherein the program access information is stored as program watched data (col. 9, lines 7-54)

wherein the programs watched data is stored in a program watched matrix (column 9, lines 7-30, the data consist of two data points, thus forming a matrix), each terminal has its own matrix stored in volatile memory

a controller 10 is coupled to a plurality of terminals 15, the controller issuing a message directing each of the terminals to provide the program access information (PPV programs ordered for billing purposes), where in the message is a polling request message (the message determines when the terminal is to dial into the headend to provide the information, the message is sent over a cable line, and the message is returned via telephone (column 8, line 24-column 9, line 30)).

Durden fails to<sup>a</sup> disclose if the response message includes a leading and trailing flag, an address field including the address of the terminal, a geographical region, and terminal identifier

Hashimoto discloses a questionnaire which is returned to a headend and includes the an address identifying a subscriber (column 8, lines 56-58, subscriber list and individual questionnaire result, as results are broken down by individual, the address and ID of each terminal must be recognized in order to determine which results

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belong to which corresponding subscriber), a subscriber region designation (column 3, lines 8-13, column 4, lines 29-33, questions specific to Japan), this information is utilized to determine when to display programs based on user interest (column 6, lines 44-60, column 7, lines 10-25).

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Durden to utilized the counts of Hashimoto, thus aiding a program provider in determining how popular a type of programming is, and aiding in determining when to air programming.

Regarding claim 32, Durden discloses a system that gathers programs watched data in a TV delivery system, comprising:

Means 10 for gathering programs watched data from one or more terminals 15 in a broadcast delivery system (column 8, lines 24-34, column 9, lines 14-20)

A database 19 that stores the gathered programs watched data (column 9, lines 24-27),

Means for counting 20 for counting the programs watched by a terminal and arranged in a matrix (column 9, lines 7-30),

Means for transmitting 10 the STB group information to the set top terminal in a control information stream that instructs the STB in selecting videos to display (column 9, line 66-column 10, line 17).

Durden fails to disclose counts corresponding to the number of times a program is watched, group assignment information that correlates counts with categories of videos, which may be sent to a terminal.

Hashimoto discloses a coefficient  $P_c(j)$  which corresponds to the number of complaints regarding a program which is reflected by how often (the number of times) a given user watches a certain type of programming at specific terminal, this number is then aggregated for a number of terminals (column 6, lines 44-60, column 7, lines 10-25), the databases include group information (column 3, lines 1-7, age group, column 8, line 57) thus aiding a program provider in determining how popular a type of programming is amongst a given audience, and aiding in determining when to air programming.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Durden to utilized the counts of Hashimoto, thus aiding a program provider in determining how popular a type of programming is, and aiding in determining when to air programming.

Regarding claims 33 and 40, Durden discloses means 18 for extracting data from an information field of a program control information signal, where the extruded data includes program information (column 9, lines 12-27, 47-50),

Means for creating a polling request message 10 (column 9, lines 14-18) that directs a STB to initiate transmission of a STB status report,

Means for processing 8 for processing the received data to produce polling response data (column 9, lines 14-30, the data is used to bill a subscriber, column 4, lines 48-67),

Means for integrating 8 for integrating the response data with the extruded data from the information field of the program control information signal (column 9, lines 14-30, the number of IPPV events a user watches is utilized to bill a subscriber, column 4, lines 48-67),

Regarding claim 34, Durden discloses means 8 for reading data files using the access means , wherein the database files are relationally keyed to one another through STB id numbers (column 6, lines 43-61, the ID is utilized to bill and authorize a user)

Means for formatting 10 the poling request message where the mess includes at least one STB id number (column 6, lines 48-52),

Means for enabling 10 at least one polling command bit in the formatted polling request message, wherein the enabled polling command bit commands transmission of the STB terminal status report (column 6, lines 47-61).

Regarding claims 35 and 41, Durden discloses control receiving means 18 for demodulating the received STB status reports (column 7, lines 33-36, column 9, lines 31-34, processor 18 is connected to a number of phone lines),

means 18 for reading data from an information field of a program status report, where the extruded data includes program information (column 9, lines 12-27, 47-50),

temporary memory for accumulating the information fields for the STB, where the accumulated information produces the polling response data (column 9, lines 42-45, 61-65, the polling data is stored in memory prior to transmission).

Hashimoto is relied upon to teach sorting the polling response data (column 8, lines 55-66).

Regarding claims 36 and 45, Durden discloses in figure 1, that the processing means and database are linked, the polling response data is stored in the database and updated (column 7, lines 31-40, billing information is updated for the programs a user views).

Regarding claims 37, and 47, Durden discloses the use of a telephone return pathway.

The combination of Durden and Hashimoto fails to disclose the use of an RF demodulator.

The examiner takes official notice that the use of an RF demodulator on a return path is notoriously well known in the art. An RF demodulator on a return path allows a user to transmit commands to the headend without having to utilize a telephone and paying the associated fees with a telephone service.

Therefore it would have been obvious to one skilled in the art at the time of invention to modify the combination of Durden and Hashimoto to utilize an RF

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demodulator on a return path, thus enabling a user to transmit upstream commands without a telephone.

Regarding claims 38, and 48, Durden discloses a telephone may used to receive data transmissions from a user (column 7, lines 37-39).

Regarding claim 39, see claim 32, additionally, Hashimoto discloses that results are arranged by program category and time in figure 8 and in column 4, line 60-column 6, line 17).

Regarding claims 42 and 56, Durden discloses means (column 6, line 60-column 7, line 5)for reading the programs watched counts, the counts are assigned to different times of the day for a program category (figure 8).

The combination of Durden and Hashimoto fails to disclose sorting the programs watched counts from highest to lowest.

The examiner takes official notice that sorting a database value from highest to lowest is notoriously well known in the art, for example in a Lotus 123. Sorting by high to low allows a user to readily recognize the best performing entry.

Therefore, it would have been obvious to one skilled in the art at the time of invention to modify Durden and Hashimoto to sort from highest to lowest, thus making it easy for a user to identify the best performing entry.

Regarding claim 43, see claims 39 and 42.

Regarding claim 44, see claim 33.

Regarding claim 46, Durden discloses the polling information may be transmitted via a telephone.

The combination of Durden and Hashimoto fails to disclose transmitting the information via CSMA/CD protocol.

The examiner takes official notice that CSMA/CD is notoriously well known in the art. CSMA/CD prevents collisions of data, thus enabling two networked devices to communicate.

Therefore it would have been obvious to one skilled in the art at the time of invention to modify the combination of Durden and Hashimoto to utilize CSMA/CD in order to prevent collisions and ensure that data is received.

Regarding claims 49-51, see claims 32-34.

Regarding claim 59 see claim 32.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

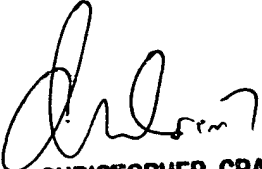
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hunter B. Lonsberry whose telephone number is 571-272-7298. The examiner can normally be reached on Monday-Friday during normal business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Grant can be reached on 571-272-7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HBL



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